



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC453]

Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, and Shark Research Fishery Permits; Letters of Acknowledgment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; request for comments.

SUMMARY: NMFS announces its intent to issue exempted fishing permits (EFPs), scientific research permits (SRPs), display permits, letters of acknowledgment (LOAs), and shark research fishery permits for Atlantic highly migratory species (HMS) in 2023. EFPs and related permits would authorize collection of a limited number of HMS, including tunas, swordfish, billfishes, and sharks, from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific research, data collection, the investigation of bycatch, and public display, among other things. LOAs acknowledge that scientific research activity aboard a scientific research vessel is being conducted. Generally, EFPs and related permits would be valid from the date of issuance through December 31, 2023, unless otherwise specified in the permit, subject to the terms and conditions of individual permits.

DATES: Written comments received in response to this notice will be considered by NMFS when issuing EFPs and related permits, and must be received on or before *[insert date 30 days after date of publication in the **FEDERAL REGISTER**]*.

ADDRESSES: Comments may be submitted electronically via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA-NMFS-2022-0101” in the

Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, phone: (301) 427-8503, email: craig.cockrell@noaa.gov.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries (tunas, billfish, swordfish, and sharks) are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. The regulations specific to HMS EFPs and related permits can be found at § 635.32.

NMFS issues EFPs and related permits where HMS regulations (*e.g.*, fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) may otherwise prohibit the collection of live animals and/or biological samples for data collection and public display purposes or may otherwise prohibit certain fishing activities that NMFS has an interest in permitting or acknowledging. Consistent with 50 CFR 600.745 and 635.32, the NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing,

conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. These permits exempt permit holders from the specific portions of the regulations that may otherwise prohibit the collection of HMS for public education, public display, or scientific research. Collection of HMS under EFPs, SRPs, display permits, and shark research fishery permits represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the relevant quota, as appropriate and applicable. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and/or species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

The Magnuson-Stevens Act exempts scientific research conducted by a scientific research vessel from the definition of “fishing.” NMFS issues LOAs acknowledging such bona fide research activities involving species that are only regulated under the Magnuson-Stevens Act (*e.g.*, most species of sharks) and not under ATCA. NMFS generally does not consider recreational or commercial vessels to be bona fide research vessels. However, if the vessels have been contracted only to conduct research and not participate in any commercial or recreational fishing activities during that research, NMFS may consider those vessels as bona fide research platforms while conducting the specified research. For example, in the past, NMFS has determined that commercial pelagic longline vessels assisting with population surveys for sharks may be considered “bona fide research vessels” while engaged only in the specified research. For such activities, NMFS reviews scientific research plans and may issue an LOA acknowledging that the proposed activity is scientific research for purposes of the Magnuson-Stevens Act. Examples of research acknowledged by LOAs include tagging and releasing sharks

during bottom longline surveys to understand the distribution and seasonal abundance of different shark species, and collecting and sampling sharks caught during trawl surveys for life history and bycatch studies.

While scientific research is not defined as "fishing" subject to the Magnuson-Stevens Act, scientific research is not exempt from regulation under ATCA. Therefore, NMFS issues SRPs that authorize researchers to collect HMS from bona fide research vessels for collection of species managed under this statute (*i.e.*, tunas, swordfish, and billfish). One example of research conducted under SRPs consists of scientific surveys of tunas, swordfish, and billfish conducted from NOAA research vessels.

EFPs are issued for activities conducted from commercial or recreational fishing vessels. Examples of activities conducted under EFPs include collection of young-of-the-year bluefin tuna for genetic research from recreational fishing vessels; conducting billfish larval tows from private vessels to determine billfish habitat use, life history, and population structure; and tagging sharks caught on commercial or recreational fishing gear to determine post-release mortality rates.

NMFS also intends to issue display permits for the collection of sharks and other HMS for public display in 2023. Collection of sharks and other HMS sought for public display in aquaria often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species (*e.g.*, sand tiger sharks), and collection of fish below the regulatory minimum size. NMFS published the final rule for Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 35778, June 24, 2008; corrected version published July 15, 2008, 73 FR 40658) which included, among other things, that dusky sharks cannot be collected for public display.

The majority of EFPs and related permits described in this annual notice relate to scientific sampling and tagging of HMS within existing quotas, and the impacts of the activities to be conducted usually have been previously analyzed in various

environmental assessments and environmental impact statements for HMS management. In most such cases, NMFS intends to issue these permits without additional opportunity for public comment beyond what is provided in this notice. Occasionally, NMFS receives applications for research activities that were not anticipated, or for research that is outside the scope of general scientific sampling and tagging of HMS, or rarely, for research that is particularly controversial. NMFS will provide additional opportunity for public comment, consistent with the regulations at 50 CFR 600.745, should such applications be received by NMFS.

In addition, this notice invites comments on the shark research fishery first implemented through Amendment 2 to the 2006 Consolidated HMS FMP. This research fishery is conducted under the auspices of the EFP program. Shark research fishery permit holders assist NMFS in collecting valuable shark life history and other scientific data required in shark stock assessments. Since the shark research fishery was established in 2008, the research fishery has allowed for: the collection of fishery dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help reduce fishery interactions through bycatch mitigation; the evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks; the collection of hook-timer and pop-up satellite archival tag information to determine at-vessel and post-release mortality of dusky sharks; and the collection of sharks to update the weight conversion factor from dressed weight to whole weight. Shark research fishery participants are subject to 100-percent observer coverage. In recent years, all non-prohibited shark species brought back to the vessel dead have been required to be retained and were counted against the appropriate quotas of the shark research fishery participant. Additionally, in recent years, all participants of the shark

research fishery were limited to a very small number of dusky shark mortalities on a regional basis. Once the designated number of dusky shark mortalities occurs in a specific region, certain terms and conditions are applied (*e.g.*, soak time limits). While the specific terms and conditions of the 2023 SRF permit have yet to be decided, NMFS expects that participants would continue to be limited in the number of sets allowed on each trip and the number of hooks allowed on each set and on the vessel itself. A **Federal Register** notice describing the specific objectives for the shark research fishery in 2023 and requesting applications from interested and eligible shark fishermen is expected to publish in the near future. NMFS requests public comment regarding NMFS' intent to issue shark research fishery permits in 2023 during the comment period of this notice.

The number of specimens that has been authorized thus far under EFPs and other related permits for 2022, as well as the number of specimens collected in 2021, is summarized in Table 1. The total amount of collections in 2021 was within the analyzed quotas for all quota-managed HMS species. The number of specimens collected in 2022 will be available when all 2022 interim and annual reports are submitted to NMFS.

In all cases, mortalities associated with EFPs, SRPs, or display permits (except for larvae) are counted against the appropriate quota. NMFS issued a total of 38 EFPs, SRPs, display permits, and LOAs in 2021 for the collection of HMS and 4 shark research fishery permits. As of October 4, 2022, NMFS has issued a total of 43 EFPs, SRPs, display permits, and LOAs and 5 shark research fishery permits.

Table 1 -- Summary of HMS Exempted Fishing Permits Issued in 2020 and 2021, Other Than Shark Research Fishery Permits

Permit Type	Species	2021			2022	
		Permits Issued	Authorized Fish (Numbers) ¹	Fish Kept/Discarded Dead (Numbers)	Permits Issued	Authorized Fish (Numbers) ¹
EFP	HMS	5	N/A ²	0	9	626
	Shark	3	N/A ¹	4	2	N/A ¹
	Tuna	1	500	1	2	500
	Swordfish	1	N/A ²	9	0	0
SRP	HMS	3	770	0	7	1,101

	Shark	1	1,010	306	0	0
Display	HMS	1	55	0	2	82
	Shark	5	287	23	4	270
Total		20	2,122	342	26	2,122
LOA	Shark	18	N/A ¹	246	17	N/A ¹

Note: "HMS" refers to multiple species being collected under a given permit type.

¹ Some shark EFPs, SRPs, and LOAs were issued for the purposes of tagging and the opportunistic sampling of sharks or other HMS and were not expected to result in large amounts of mortality, thus no limits on sampling were set. Some mortality may occur throughout 2022, and will be accounted for under the 60-metric ton shark research and display quota.

² These permits are issued to commercial fishermen and the number of species retained are governed by commercial retention limits.

Final decisions on the issuance of any EFPs, SRPs, display permits, and shark research fishery permits will depend on the submission of all required information about the proposed activities, NMFS' review of public comments received on this notice, an applicant's reporting history on past permits, if vessels or applicants were issued any prior violations of marine resource laws administered by NOAA, consistency with relevant National Environmental Policy Act documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs, consistent with the assessment of such activities within the environmental impacts analyses in existing HMS actions, including the 1999 FMP, the 2006 Consolidated HMS FMP and its amendments, Amendment 2 to the Consolidated HMS FMP, the Environmental Assessment for the 2012 Swordfish Specifications, the Environmental Assessment for the 2022 Final Bluefin Tuna Quota and Atlantic Tuna Fisheries Management Measures, and the 2022 Zero Atlantic Shortfin Mako Shark Retention Limit Final Rule.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: October 20, 2022.

Jennifer M. Wallace,

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National Marine Fisheries Service.

